



December 21, 1999

Mr. John Steiner
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR99-3695

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130694.

The City of Austin (the "city") received a request for information related to an agreement concerning the city's water resources. You indicate that the city will make the requested information available to the requestor with the exception of the information about which you seek this office's determination. You claim that the conflict of interest report from the law firm of Akin, Gump, Strauss, Hauer and Feld, L.L.P. (the "law firm") is excepted from disclosure under sections 552.101, 552.107, and 552.110 of the Government Code. We have considered your arguments and have reviewed the submitted information.

Pursuant to section 552.305 of the Government Code, you notified the law firm of the request for information. The law firm had the opportunity to submit to our office within ten business days after receiving the city's notice the reason or reasons why the information should be withheld and a letter, memorandum, or brief in support of the proffered reasons. Gov't Code § 552.305(B)); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). To date, we have not received any correspondence from the law firm regarding its potential third-party interests. Consequently, we have no basis to conclude that the law firm's information is excepted from disclosure. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific

factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Therefore, the city may not withhold the submitted information under section 552.110 of the Government Code.

You additionally assert that the information is excepted from disclosure by section 552.101 in conjunction with the common-law right to privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common-law privacy. After reviewing the submitted material, we do not believe that the requested information must be withheld based on a right of privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common-law privacy); Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)) (constitutional privacy). Common-law privacy protects the rights of individuals, not corporations. Open Records Decision No. 620 (1993). Corporations do not have a right to privacy. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); see Open Records Decision No. 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings, and does not protect evaluation report on private college). Thus, the law firm has no right of privacy in its financial information. Therefore, we conclude that the requested information is not excepted from disclosure under section 552.101.

Finally, you assert that the submitted information is excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. Open Records Decision Nos. 574 (1990), 559 (1990), 462 (1987). We have reviewed the submitted documents and have concluded that the information contained therein is not privileged information, nor does it impart the legal advice or opinions of an attorney representing the city. The information may not be withheld pursuant to section 552.107.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Carla Gay Dickson". The signature is written in a cursive, flowing style.

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 130694

Encl. Submitted documents

cc: Mr. Bill Bunch
Save our Springs Alliance
P.O. Box 684881
Austin, Texas 78768
(w/o enclosures)